



HEAD OFFICE
Johannesburg
1st Floor, Norfolk House
Cnr 5th Street & Norwich Close
Sandton, 2196
PO Box 651826, Benmore, 2010
Tel (011) 884-8454 □ Fax (011) 884-1144
E-Mail: enquiries-jhb@pfa.org.za

Cape Town
2nd Floor, Oakdale House, The Oval
Oakdale Road, Newlands, 7700
P O Box 23005, Claremont, 7735
Tel (021) 674-0209 □ Fax (021) 674-0185
E-mail: enquiries@pfa.org.za
Website: www.pfa.org.za

Please quote our ref: PFA/WE/5458/2005/SG

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT OF 1956 (“the Act”) – B Jacobs v Metropolitan Life Pension Fund

Introduction

1. This complaint relates to the non-payment of a member’s benefit when he exited the fund. The complaint was received by this office on 12 September 2005, and a letter acknowledging receipt thereof was sent to you on 20 September 2005. The response to the complaint, which was forwarded to you, was received on 6 October 2006. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below.

Complaint

2. You allege that you were employed by Metropolitan Life Limited (“the employer”) from 1985 until 1989. You further allege that while you were so employed you were a member of Metropolitan Life Pension Fund (“the fund”). You state that when you left service in October 1989 you were advised that you were entitled to a benefit in the amount of R4500,00. You further state that you were advised that your pension would be paid on or before the age of 55 years. Your complaint in essence is that since you left service the benefit remains unpaid.

Fund’s response

3. The fund states that there is no record in its possession reflecting that you were a member of the fund. It submits that the records of its administrator

V Ngalwana (Adjudicator), N Jeram (Deputy Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), L Shrosbree (Snr Assistant Adjudicator), Z Camroodien (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), R Maharaj (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), J Mabuza (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Thabethe (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator)

Office Manager: L Manuel

indicate that you were the holder of two endowment policies which have lapsed. It further states that your allegation that you were advised that you would receive your benefit on or before the age of 55 years is inconsistent with the fund rules, for the reason that the fund's rules do not make provision for paid-up or deferred benefits. The fund further states that its rules give a member a period of three years to claim the benefits and thereafter the benefit is dealt with in terms of the Prescription Act.

4. The fund further states that it cannot ascertain whether you were in service of the employer, for the reason that the employer retains documentation for a period of five years and the event in which you are complaining about occurred 16 years ago.

Determination and reasons therefor

Point in limine

5. Before dealing with the merits, I first need to address an important jurisdictional point. Section 30(I)(1) of the Act precludes me from investigating and adjudicating upon a complaint lodged with this office more than 3 years after the occurrence of the event to which the complaint relates. However, I have discretion to extend the 3 year time period or to condone non-compliance therewith provided there is good cause shown.
6. There is good reason for a limit to be imposed on the time during which litigation may be launched and the Constitutional Court has pronounced on this. In *Mohlomi v Minister of Defence* 1997 (1) SA 124 (CC) the Court said (at paragraph [11]):

“Rules that limit the time within which litigation may be launched are common in our legal system as well as many others. Inordinate delays in litigation damage the interests of justice. They protract the disputes over the rights and obligations sought to be enforced, prolonging the uncertainty of all concerned about their affairs. Nor in the end is it always possible to adjudicate satisfactorily on cases that have gone stale. By then witnesses may no longer be available to testify. The memories of ones whose testimony can be obtained have faded and become unreliable. Documentary evidence may have disappeared. Such rules prevent procrastination and those harmful consequences of it. They serve a purpose to which no exception in principle can cogently be taken.”

7. The complaint relates to an event which occurred in 1989. The complaint was received by this office on 12 September 2005. This is more than three years after the occurrence of the event to which the complaint relates. Thus, the complaint is time-barred. However, that does not spell the end of the matter as I have to determine whether good cause exists for condoning its late lodging.
8. The Supreme Court of Appeal (or Appellate Division as it was then known)

has pronounced upon the standard that must be met for condonation to be granted in circumstances like these. In *Melane v Santam Insurance Company Limited* 1962 (4) SA 531 (A) at 532C-F the court said:

“In deciding whether sufficient cause has been shown, the basic principle is that the Court has a discretion, to be exercised judicially upon a consideration of all facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant is the degree of lateness, the explanation therefor, the prospects of success, and the importance of the case. Ordinarily these facts are interrelated: they are not individually decisive, for that would be a piecemeal approach incompatible with a true discretion, save of course that if there are no prospects of success there would be no point in granting condonation. Any attempt to formulate a rule of thumb would only serve to harden the arteries of what should be a flexible discretion. What is needed is an objective *conspectus* of all the facts. Thus a slight delay and a good explanation may help to compensate for prospects of success which are not strong. Or the importance of the issue and strong prospects of success may tend to compensate for a long delay. And the respondent’s interest in finality must not be overlooked.”

9. A period of almost 16 years has elapsed since the cause of complaint arose. You advanced no reason for taking such a long period of time to query the payment of your benefit. In any event, even if I were to condone the late lodgement of the complaint, I consider the prospects of success on the merits to be remote. Due to the lapse of time, no record of your membership of the fund can be found. The fund cannot be faulted for this as I consider the period of 16 years that has elapsed since you left service to be inordinately long. Furthermore, the fund would be prejudiced if it were now called upon to respond to the complaint, for the reason that it would require the unavailable documentation to respond fully to the complaint.
10. In the result, I find that no good cause exists for me to condone the late lodging of this complaint.
11. The complaint is dismissed.

DATED AT CAPE TOWN THIS THE DAY OF 2006.

Yours faithfully

Vuyani Ngalwana
Pension Funds Adjudicator